

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 139 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK DHIRAJLAL PANDYA

Versus

DISTRICT MAGISTRATE

Appearance:

MR AM PAREKH for Petitioner

MR AJ DESAI A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 22/02/2000

ORAL JUDGEMENT

Heard learned advocate Mr. A. M. Parekh for the petitioner and learned A.G. P. Mr. A. J. Desai for the respondents Nos. 1, 2 and 3.

1. The detention order dated 27.4.1999 passed by the

respondent No. 1, District Magistrate, Bhavnagar , in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present proceedings under Article 226 of the Constitution of India.

2. The grounds of detention served upon the detenu under Section 9(1) of the "PASA", interalia indicate that the petitioner is involved in all seven criminal cases registered at "A" Division, Police Station , Bhavnagar in between 4.5.1998 to 16.1.1999. That the Criminal cases are registered for the alleged offences made punishable under Sections 379, 457 read with 114 of IPC etc. That over and above, three witnesses, on assurance of their anonymity, have given statements dated 22.4.1999 stating the anti-social activities of the detenu/petitioner.

3. That on the basis of above stated material, the respondent No. 1, as Detaining Authority, has come to the conclusion that the detenu is a "dangerous person " within the meaning of Section 2(c) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activities, and thereby, in order to prevent the petitioner from continuing his such activities, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that the last offence on which, the detention order is based, has been registered vide CR. No. 36/99 dated 16.1.1999. That the petitioner was arrested in the said case on the same day and was released on bail on 30.1.1999. That thereafter, except the statements of anonymous witnesses dated 22.4.1999, there is no material on record to show the continuity of the anti-social activities of the detenu. That in absence of any reasonable explanation , the impugned action of passing the detention order having been taken with inordinate delay, it is bad in law.

5. In the matter of Pradip Nilkanth Paturkar Vs Ramamurthi and others, reported vide AIR, 1994, SC, 656, the Hon'ble Supreme Court has elaborated the proposition of law that if the delay in passing detention order from the date of last registered case on which the detention order is based is not satisfactorily explained by the Detaining Authority, the order can not be said to be valid and deserves to be struck down. That the said proposition has been followed in different matters and

this Court in the matter of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and others, reported vide 1997 (1), GLH, 381 has also reiterated the said proposition, after referring several authorities of Supreme Court.

6. In the instance case, scrutiny of grounds of detention, suggest that it is devoid of any explanation as to why the petitioner who was released on bail on 30.1.1999, the impugned order has been passed on 29.4.1999. It may be noted that despite due service of Rule, none of the respondents has filed any affidavits to controvert the averments made in the petition. That in absence of any reasonable explanation, the inordinate delay in taking impugned action of passing detention order can not be sustained.

7. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide, the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 11.4.1999 passed by the respondent No. 2 against the petitioner is hereby quashed and set aside. The petitioner Ashok Dhirajlal Pandya, is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute to that extent.

PS : It is stated at bar on behalf of the petitioner that pending the final hearing of this petition, the petitioner has been transferred to District Jail, Junagadh and as such the writ of this be also sent to Superintendent, District Jail, Junagadh.

Date : 22.02.2000. (A. K. Trivedi, J.)

PALLAV.